



07-30-04

IPR

JUL 28, 2004

APPLICATION No. 10/698,231; FILING DATE: 11/01/2003; CONFIRMATION No. 2309

Title: Dancing Toy Lollipop

Author: Rodolfo Fernandez Jr.

OFFICE ACTION NOTICE DATE: 05/17/2004

EXAMINER: BENA MILLER

FORMALITIES LETTER: Not sent by the Office or received by the author yet

**CLARIFICATION LETTER FORESEEING A NOTICE REGARDING FILE MISSING PARTS OF AMENDMENT RESPONSE DATED 07/23/2004 (MAILED 07/24/2004)**

SIR:

Last week, on Saturday 24<sup>th</sup>, the author sent to the USPTO (Mail Stop: Amendment) his response to the Office Action Notice of the reference.

Yesterday, however, the author received an Office Notice regarding another patent application filed on 04/21/2004, and with whose required paper documents had sent a CD as back up with the same information submitted in paper, and in said Notice, it is requested the submission of two copies of said CD and the compliance of a series of formalities.

In response to said Notice, the author has sent a letter to the USPTO (Mail Stop: Missing Parts), clarifying that said CD is not a permanent part of the file of the patent application because it does not contain any of the information that may be sent as electronic document, according to 37CFR 1.52 (e) (1), and respectfully requesting that said CD be discarded as unnecessary and non required material.

Hereby, the author wishes to clarify that the same has happened with the Amendment Response of the reference, sent to the USPTO (Mail Stop: Amendment), since the author has also included a CD as back up, in addition to the truly required documents, all of which has been properly submitted in said response.

According to PATENT RULE 37CFR 1.52 (e) (1), regarding *Electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application or reexamination proceeding*, the following documents may be submitted to the Office on a compact disc in compliance with said paragraph:

- (i) A computer program listing (see paragraph 1.96);
- (ii) A "Sequence Listing" (submitted under paragraph 1.821(c)); or
- (iii) A table (according to paragraph 1.58) that has more than 50 pages of text.

(Underlined by the author)

The compact disc submitted together with the required documents for the Amendment to the patent application of the reference, does not contain any information or data of the kind listed above in 1.52 (e) (1), and hence, does not comply with the conditions to be admitted (not required) as part of the permanent records of the USPTO in the file of a patent application, since it is neither a computer program listing, or a "Sequence Listing", nor a table, but just a back up with the same data sent in the paper documents required and duly sent.

The author's intention submitting said compact disc, was to provide in good faith an additional, and not required at all, back up material to facilitate the examination procedures.

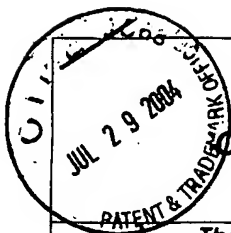
Since, apparently, said compact disc as submitted is not useful and, what is worst, interferes with the normal procedures, the author respectfully requests it to be discarded as unnecessary and not required as part of the permanent record in the file of the present application.

For any further clarification, in addition to the formal contact procedures, the author may be contacted through E-mail to the following address: rodmar3841@aol.com.

Respectfully submitted,



Rodolfo Fernandez Jr.



## Office Action Summary

Application No.	Applicant(s)	
10/698,231	FERNANDEZ, RODOLFO	
Examiner	Art Unit	
Bena Miller	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |